

Customs Bulletin

Regulations, Rulings, Decisions, and Notices
concerning Customs and related matters



and Decisions of the United States Court of Appeals for the Federal Circuit and the United States Court of International Trade

Vol. 17

DECEMBER 7, 1983

No. 49

This issue contains:

U.S. Customs Service

T.D. 83-238 Through 83-250

U.S. Court of International Trade

Slip Op. 83-116 Through 83-118

Protest Abstracts P83/359 Through P83/364

Reap Abstract R83/710

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

Customs Bulletin

Regulations, Rulings, Decisions, and Notices
concerning Customs and related matters

and Decisions

is the official source of information for
the Federal Customs and related matters
States Court of International Trade



NOTICE

The abstracts, rulings, and notices which are issued weekly by the U.S. Customs Service are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Logistics Management Division, Washington, D.C. 20229, of any such errors in order that corrections may be made before the bound volumes are published.

U.S. Customs Service

Treasury Decisions

19 CFR Part 162

(T.D. 83-238)

Boarding and Search of Vessels by Customs Officers

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations relating to the boarding and search of vessels to: (1) permit Customs officers to board and search an American vessel on the high seas without a requirement that there be probable cause to believe that such vessel is violating or has violated the laws of the United States; and (2) provide that Customs officers are authorized to assist any other agency in the enforcement of United States laws on any vessel.

Customs believes that these changes are in the interest of the efficient and effective administration of its enforcement responsibility.

EFFECTIVE DATE: December 23, 1983.

FOR FURTHER INFORMATION CONTACT: Stuart P. Seidel, Assistant Chief Counsel (Enforcement and Operations), U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-2482).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 162.3(a), Customs Regulations (19 CFR 162.3(a)), presently states that a Customs officer, for the purpose of examining the manifest and other documents and papers, and examining, inspecting, and searching a vessel, may at any time go on board:

- (1) Any vessel at any place in the United States or within the Customs waters of the United States;

(2) Any American vessel on the high seas, when there is probable cause to believe that such vessel is violating or has violated the laws of the United States; or

(3) Any vessel within a Customs-enforcement area designated such under the provisions of the Anti-Smuggling Act (Act of August 5, 1935, as amended, 49 Stat. 517; 19 U.S.C. 1701, 1703-1711), but Customs officers shall not board a foreign vessel upon the high seas in contravention of any treaty with a foreign government, or in the absence of a special arrangement with the foreign government concerned.

In a notice published in the Federal Register on September 14, 1981 (46 FR 45626), Customs proposed to amend section 162.3(a)(2) by eliminating the requirement that there be probable cause to believe that an American vessel is violating or has violated the laws of the United States before it is boarded and searched on the high seas.

The notice also proposed to add a new section 162.3(c) which would state that Customs officers are authorized to assist any other agency in the enforcement of United States laws on any vessel.

COMMENTS

In response to the notice, Customs received four comments, one of which supports the proposed rule.

One commenter simply contends that Customs does not have the authority to make the proposed changes.

Another commenter states that the proposed rule does not present a convincing legal basis for the changes, and that the notice does not adequately address the question of the protection afforded by the Fourth Amendment to the Constitution. The commenter states, with respect to the reference in the notice that Customs authority under 19 U.S.C. 1581(a) is substantially similar to Coast Guard authority under 14 U.S.C. 89(a), that 14 U.S.C. 89(a) specifically authorizes Coast Guard inspections, searches and seizures "upon the high seas," whereas 19 U.S.C. 1581 contains no such general reference to Customs enforcement seaward of customs waters.

A final commenter maintains that Customs does not have statutory authorization for the proposed rule in that, pursuant to 19 U.S.C. 1581(a), Customs authority with respect to boarding, inspecting, and searching a vessel, is limited to the customs waters. In this regard, *United States v. Warren*, 578 F. 2d 1058 (5th Cir. 1978) (*en banc*), *rev'g* 550 F. 2d 219 and *United States v. Williams*, 617 F. 2d 1063 (5th Cir. 1980) are cited. The commenter contrasts the functions of Customs and the Coast Guard, and concludes that Customs has a well-defined, narrow task compared to the general and pervasive powers of the Coast Guard on the high seas. The commenter further states that, even if Customs did have the statutory authority for the proposed rule, such authority could not be exercised con-

sistently with the Fourth Amendment, particularly with respect to generalized searches, as opposed to stops for documentary checks or safety checks. The commenter contends that the case law indicates that there must be reason to suspect that a border crossing or a violation of law has occurred before even a documentary check or safety check can be made. Thereafter, a generalized search subsequent to an investigatory stop requires probable cause.

FORMULATION OF FINAL RULE

The comments did not address the proposal to add a new section 162.3(c) to the Customs Regulations. The proposal is being adopted.

After a review of the comments and further consideration of the matter, Customs has decided to adopt the proposal to amend section 162.3(a)(2) to permit Customs officers to board and search an American vessel on the high seas without a requirement that there be probable cause to believe that such vessel is violating or has violated the laws of the United States.

Section 581(a), Tariff Act of 1930, as amended (19 U.S.C. 1581(a)), states as follows:

Any officer of the customs may at any time go on board of any vessel or vehicle at any place in the United States or within the customs waters or, as he may be authorized, within a customs-enforcement area established under the Anti-Smuggling Act, or at any other authorized place, without as well as within his district, and examine the manifest and other documents and papers and examine, inspect, and search the vessel or vehicle and every part thereof and any person, trunk, package, or cargo on board, and to this end may hail and stop such vessel or vehicle, and use all necessary force to compel compliance. (Emphasis supplied.)

Under 14 U.S.C. 89(a), the Coast Guard is authorized to:

make inquiries, examinations, inspections, searches, seizures, and arrests upon the high seas and waters over which the United States has jurisdiction, for the prevention, detection, and suppression of violations of laws of the United States. For such purposes, commissioned, warrant, and petty officers may at any time go on board of any vessel subject to the jurisdiction, or to the operation of any law, of the United States, address inquiries to those on board, examine the ship's documents and papers, and examine, inspect, and search the vessel and use all necessary force to compel compliance.

As stated by the court in *Warren, supra* at 1064-65, pursuant to 14 U.S.C. 89(a), the Coast Guard may apprehend and board any vessel of the American flag on the high seas; such authority does not need to be founded upon any particularized suspicion.

In *United States v. Freeman*, 579 F. 2d 942, 946 (5th Cir. 1978), the court, in holding that Customs officials had statutory authority pursuant to 19 U.S.C. 1581(a) to detain and board a vessel in cus-

toms waters for the purpose of a document check, described 14 U.S.C. 89(a) as being "analogous" to 19 U.S.C. 1581(a), and stated that the language of the two statutes was "nearly identical." The court further stated that "the authority embodied within section 1581 may be traced back to the commencement of the Republic when the First Congress statutorily granted Customs officials broad powers." (Emphasis supplied.)

In *United States v. Gollwitzer*, 697 F. 2d 1357 (11th Cir. 1983), which involved the boarding and search of a vessel on inland waters by Customs officers, the court spoke of "the broad authority vested in Customs and Coast Guard officers."

Customs believes that the authority for the promulgation of amended section 162.3(a)(2), is as follows:

1. 19 U.S.C. 1581(a), particularly the words "at any other authorized place." 19 U.S.C. 1581(a) authorizes boardings within the United States (internal waters and the territorial sea to the three-mile limit), within the customs waters (generally from the coast to the 12-mile limit of the contiguous zone), or within customs-enforcement areas (50 miles from the limits of customs waters). The only area remaining is international waters beyond the customs waters.

2. The substantial similarity of 19 U.S.C. 1581(a) and 14 U.S.C. 89(a).

3. The fact that the Coast Guard may stop and board any American vessel on the high seas; prior to 1936, the Coast Guard's authority was based upon the predecessor statute to 19 U.S.C. 1581(a). See *Maul v. United States*, 274 U.S. 501, 507 (1927).

4. 46 U.S.C. 277 which authorizes customs officers to inspect a vessel's documents at any time.

5. The fact that customs laws clearly contemplate actions beyond the 12-mile limit. See 19 U.S.C. 1581 (g) and (h), 1583, 1586 (b), (c), and (e), and 1587.

6. 19 U.S.C. 66, which states in part that the Secretary of the Treasury "shall give such directions to customs officers and prescribe such rules and forms to be observed by them as may be necessary for the proper execution of the law."

One of the commenters points out language in *United States v. Williams*, *supra* at 1073, which states:

Section 1581(a) empowers both the Customs Service and the Coast Guard to board vessels and conduct customs searches, but only in customs waters within the twelve-mile limit.

Customs does not believe that this language of *Williams* precludes the amendment to section 162.3(a). The issue of a Customs officer boarding an American vessel on the high seas was not presented in *Williams*, which involved the Coast Guard's seizure of a foreign vessel on the high seas. Further, Customs believes that the court in *Williams*, in writing of section 1581(a), merely repeated the limitations recognized by the court in *Warren*, which were based on the restrictive language of section 162.3(a)(2). Customs

does not believe that the court in *Williams* considered the "at any other authorized place" language of 19 U.S.C. 1581(a).

Customs believes that section 162.3(a) should be consistent with the language of the corresponding statute, 19 U.S.C. 1581(a). If additional interpretation of the statute or regulations is necessary, it should be done by the courts. Over the last few years, there have been numerous cases in several circuits involving vessel searches and seizures.

Customs believes that the amendment to section 162.3(a) is constitutional. In *Williams*, *supra* at 1081-82, the court spoke of:

* * * the cases holding that section 89(a) constitutionally authorizes the Coast Guard to stop American vessels beyond the twelve-mile limit for routine safety and documentary checks. E.g. *United States v. Warren*, 578 F. 2d 1058; *United States v. One (1) 43 Foot Sailing Vessel*, 538 F. 2d 694; *United States v. Odom*, 526 F. 2d 339. These cases reconfirm the notion that the fourth amendment does not necessarily require any sort of suspicion of criminal activity before a vessel may be stopped at sea; in addition, they imply that Congress's authority to enact statutes providing for "groundless" searches of vessels is not limited by the Constitution to United States customs waters.

The *Williams* court, *supra* at 1083, also stated that:

The United States obviously has a vital interest in preventing the smuggling of illegal narcotics into the country and in apprehending those who may reasonably be suspected of violating the criminal narcotics laws.

Furthermore, the seizure of a nautical vessel is a very limited and foreseeable intrusion.

In *Freeman*, *supra* at 946, the court stated:

[No] case holds that the stop of a vessel on the seas for a document or safety check is constitutionally proscribed by the Fourth Amendment. Indeed, our cases have upheld the right of government agents to stop vessels for routine safety and document checks under the analogous statutory authority granted to the Coast Guard by 14 U.S.C. 89(a).

In *Gollwitzer*, *supra* at 1657, the court recognized that ocean going vessels have a diminished expectation of privacy:

The potential for provoking fear by randomly stopping vessels capable of ocean travel is therefore less onerous than that in the context of random automobile stops or airport seizures.

The United States Supreme Court in *U.S. v. Villamonte-Marquez*, — U.S. — (1983) recognized the constitutionality of 19 U.S.C. 1581 and held that the standards which govern vessel boardings are different than those governing land vehicles.

The proposal to amend section 162.3 will improve the effectiveness of maritime interdiction activities. Operations on the high seas will continue to be governed by the 1978 interagency agree-

ment between the Coast Guard and Customs which sets forth the framework for such activities.

The Fourth Amendment prohibits searches and seizures which are unreasonable. The actions authorized by the amendment to section 162.3(a) are not unreasonable in view of the role of Customs; the fact that Customs frequently acts in concert with the Coast Guard; and the fact that no case holds that the stop and search of a vessel on the high seas is constitutionally prohibited by the Fourth Amendment.

EXECUTIVE ORDER 12291

These amendments will not result in a "major rule" as defined in section 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

REGULATORY FLEXIBILITY ACT

It is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that these amendments will not have a significant economic impact on a substantial number of small entities. The amendments are an enforcement measure which is not expected to have incidental effects on a substantial number of small entities.

DRAFTING INFORMATION

The principal author of this document was Gerard J. O'Brien, Jr., Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

LIST OF SUBJECTS IN 19 CFR PART 162

Law enforcement, Customs duties and inspection, Imports.

AMENDMENTS TO THE REGULATIONS

Part 162, Customs Regulations (19 CFR Part 162), is amended as set forth below.

WILLIAM VON RAAB,
Commissioner of Customs.

Approved: November 2, 1983.

JOHN M. WALKER, JR.,

Assistant Secretary of the Treasury.

[Published in the Federal Register, November 23, 1983 (48 FR 52897)]

PART 162—RECORDKEEPING, INSPECTION, SEARCH, AND SEIZURE

Section 162.3 is revised to read as follows:

§ 162.3 Boarding and search of vessels.

(a) *General authority.* A Customs officer, for the purpose of examining the manifest and other documents and papers and examining, inspecting and searching the vessel, may at any time go on board:

(1) Any vessel at any place in the United States or within the Customs waters of the United States;

(2) Any American vessel on the high seas;

(3) Any vessel within a Customs-enforcement area designated such under the provisions of the Anti-Smuggling Act (Act of August 5, 1935, as amended, 49 Stat. 517; 19 U.S.C. 1701, 1703-1711), but Customs officers shall not board a foreign vessel upon the high seas in contravention of any treaty with a foreign government, or in the absence of a special arrangement with the foreign government concerned.

(b) *Search of army or navy vessel.* If the district director or special agent in charge believes that sufficient grounds exist to justify a search of any army or navy vessel, the facts shall be reported to the commanding officer or master of the vessel with a request that he cause a full search to be made, and advise the district director or special agent in charge of the result of such search. If, after the cargo has been discharged, passengers and their baggage landed, and the baggage of officers and crewmembers examined and passed, the district director or special agent in charge believes that sufficient grounds exist to justify the continuance of Customs supervision of the vessel, the commanding officer or master of the vessel shall be advised accordingly.

(c) *Assistance of other agencies.* Customs officers are authorized to assist any other agency in the enforcement of United States laws on any vessel.

(R.S. 251, as amended, sec. 581, 46 Stat. 747, as amended, sec. 624, 46 Stat. 759
(19 U.S.C. 66, 1581, 1624))

(T.D. 83-239)

Bonds

Approval and discontinuance of Carrier's Bonds, Customs Form 3587

Bonds of carriers for the transportation of bonded merchandise have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by figures in parentheses immediately following, which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Dated: November 17, 1983.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
A & S Trucking, P.O. Box 4027, Missoula, MT; motor carrier; The Travelers Indemnity Co.. D 10/25/83	Jan. 7, 1982	Feb. 2, 1982	Great Falls, MT \$25,000
Advance Transportation Systems, Inc., 800 South Cooper Ave., Cincinnati, OH; motor carrier; Ins. Co. of North America.	Nov. 1, 1983	Nov. 3, 1983	Cleveland, OH \$50,000
All States Trucking—see Pacific Inter-mountain Express Co.. Averitt Express, Inc., P.O. Box 3166, Cookeville, TN; motor carrier; The American Ins. Co..	Oct. 24, 1983	Nov. 8, 1983	New Orleans, LA \$25,000
B & H Trucking Co., 1441 Ferry Ave., Camden, NJ; motor carrier; The North River Ins. Co.. D 11/6/83	Oct. 19, 1982	Oct. 27, 1982	Philadelphia, PA \$25,000
Bekins Van Lines Co., 333 S. Center St., Hillside, IL; motor carrier; Ins. Co. of North America. (PB 2/10/82) D 11/7/83	Sept. 20, 1983	Nov. 8, 1983	Los Angeles, CA \$300,000
Central Cartage Co., 34200 Mound Rd., Sterling Heights, MI; motor carrier; Ins. Co. of North America. (PB 9/1/78) D 10/26/83 ¹	Oct. 17, 1983	Oct. 26, 1983	Detroit, MI \$50,000
Central Transport, Inc., 34200 Mound Rd., Sterling Heights, MI; motor carrier; Ins. Co. of North America. (PB 9/1/78) D 10/26/83 ²	Oct. 17, 1983	Oct. 26, 1983	Detroit, MI \$50,000
Complete Auto Transit, Inc., East 4111 Andover Rd., Bloomfield Hills, MI; motor carrier; Fidelity & Deposit Co. of MD.	Oct. 10, 1983	Oct. 21, 1983	Detroit, MI \$50,000
Continental Carrier Corp., 15045 E. Salt Lake Ave., P.O. Box 1257, City of Industry, CA; motor carrier; National Union Fire Ins. Co. of Pittsburgh, PA.	Sept. 27, 1983	Oct. 11, 1983	Los Angeles, CA \$50,000
Davis Transport Inc., 216 Trade St., Missoula, MT; motor carrier; Allied Fidelity Ins. Co.. (PB 9/17/81) D 10/24/83 ³	Oct. 24, 1983	Nov. 3, 1983	Great Falls, MT \$50,000
Emerson Electric Co., Transportation Div., 514 Earth City Expressway, St. Louis, MO; contract carrier; Safeco Insurance Co. of America.	Aug. 15, 1983	Nov. 10, 1983	St. Louis, MO \$50,000
General Cartage Co., South 20 West 22971 Pearl St., Waukesha, WI; motor carrier; The Travelers Indemnity Co.. D 9/18/83	June 13, 1978	June 23, 1978	Milwaukee, WI \$25,000
Richard M. Godfrey d/b/a Richard M. Godfrey Trucking, 6419 West 2100 South, West Valley City, UT; motor carrier; Mid-Century Ins. Co..	June 20, 1983	Oct. 18, 1983	Great Falls, MT \$25,000

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
The Great American Trucking Co., Inc., P.O. Drawer 2657, Peachtree City, GA; motor carrier; Gulf Ins. Co..	Oct. 24, 1983	Oct. 28, 1983	Tampa, FL \$50,000
Greentree Transportation, 6501 W. 65th St., Chicago, IL; motor carrier; United States Fire Ins. Co..	Sept. 22, 1983	Oct. 31, 1983	Philadelphia, PA \$25,000
Harmony Transport, Inc., P.O. Box 9487, Yakima, WA; motor carrier; State Farm Fire & Casualty Co..	July 18, 1983	Nov. 1, 1983	Seattle, WA \$25,000
Howard Trucking Co., Inc., P.O. Drawer 1479, New Iberia, LA; motor carrier; The Travelers Indemnity Co..	Oct. 7, 1983	Nov. 2, 1983	New Orleans, LA \$25,000
J & P Express, 11017 Wildcat Canyon Rd., Lakeside, CA; contract carrier; Peerless Ins. Co..	Oct. 19, 1983	Nov. 14, 1983	San Diego, CA \$50,000
Keri Corp., 58-20 Borden Ave., Masspeth, Long Island, NY; motor carrier; Old Republic Ins. Co..	Aug. 30, 1983	Oct. 27, 1983	Philadelphia, PA \$50,000
Kunkle Transfer & Storage Co., P.O. Box 3498, Phoenix, AZ; motor carrier; Aetna Casualty & Surety Co.. D 9/27/83	Aug. 29, 1982	Aug. 29, 1982	Nogales, AZ \$25,000
The Long Island Railroad Co., Jamaica Station, Jamaica, NY; rail carrier; Sentry Ins.—a Mutual Co.. (PB 9/27/79) D 9/27/83 ⁴	Sept. 27, 1983	Oct. 28, 1983	New York Seaport \$100,000
Lyons Transport, Inc., 710 Sprucewood Ave., Windsor, Ontario, Canada; motor carrier; Commercial Union Ins. Co.. D 10/28/83	June 30, 1975	Aug. 14, 1975	Detroit, MI \$50,000
Andrew McDermott, Inc., 222 Murray St., Newark, NJ; motor carrier; The Travelers Indemnity Co.. D 10/31/83	June 14, 1972	July 12, 1972	Philadelphia, PA \$50,000
McKinlay Transport Limited Inc., 34200 Mound Rd., Sterling Heights, MI; motor carrier; Insurance Co. of North America. (PB 9/1/78) D 10/26/83 ⁵	Oct. 17, 1983	Oct. 26, 1983	Detroit, MI \$50,000
M. R. & R. Trucking Co., P.O. Box 1000, Staunton, VA; motor carrier; St. Paul Fire & Marine Ins. Co.. (PB 10/29/68) D 10/27/83 ⁶	Oct. 18, 1983	Oct. 28, 1983	Mobile, AL \$25,000
Mukluk Freight Lines, Inc., 3812 Spenard Rd., Anchorage, AK; motor carrier; The American Ins. Co.. (PB 2/4/75) D 2/4/78 ⁷	Feb. 4, 1978	Feb. 5, 1978	Anchorage, AK \$25,000
National Marine Service, Inc., 3710 Dacoma, Houston, TX; water carrier; Ins. Co. of North America. D 10/27/83	Feb. 8, 1980	Feb. 8, 1980	Houston, TX \$50,000

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
New Concept Transportation Inc., 458 Kleman Rd., Gilbertsville, PA; motor carrier; Protective Ins. Co. D 10/24/83	Dec. 8, 1982	Dec. 13, 1982	Philadelphia, PA \$25,000
Pacific Intermountain Express Co. and All States Trucking, a Div. of Pacific Intermountain Express Co. (P.I.E.), P.O. Box 958, Oakland, CA; motor carrier; American Casualty Co. D 11/2/83	Mar. 23, 1978	Mar. 23, 1978	San Francisco, CA \$50,000
Risberg's Truck Line, 2339 S. E. Grand Ave., Portland, OR; motor carrier; St. Paul Fire & Marine Ins. Co.	Oct. 18, 1983	Nov. 2, 1983	Portland, OR \$25,000
Smith Hardware Inc. d/b/a Smith Oil Co., Main St., Jackman, ME; motor carrier; St. Paul Fire & Marine Ins. Co. D 10/31/83	Oct. 3, 1983	Oct. 13, 1983	St. Albans, VT \$25,000
Smith Oil Co.—see Smith Hardware Inc.			
Tobler Transfer, Inc., Spring Valley, IL; motor carrier; St. Paul Fire & Marine Ins. Co. (PB 9/20/81) D 10/31/83 ⁸	Oct. 22, 1983	Oct. 31, 1983	Chicago, IL \$25,000
Todd Transportation Co., 9 Becon Dr., Wilder, KY; P.O. Box 599, New Port, KY; motor carrier; Old Republic Ins. Co. (PB 10/13/80) D 11/9/83 ⁹	Oct. 7, 1983	Nov. 9, 1983	Cleveland, OH \$50,000
Torque Transport Inc., 2190 Hymus Blvd., Dorval, Quebec, Canada; motor carrier; The Hanover Inc. Co.	Nov. 1, 1983	Nov. 7, 1983	St. Albans, VT \$25,000
Total Transportation Corp., 429 Moon Clinton Rd., Coraopolis, PA; motor carrier; Old Republic Ins. Co.	July 26, 1983	Nov. 1, 1983	Philadelphia, PA \$25,000
Tri-State Motor Transit Co., P.O. Box 113, Joplin, MO; motor carrier; The Aetna Casualty & Surety Co. (PB 5/18/71) D 10/28/83 ¹⁰	Oct. 17, 1983	Oct. 28, 1983	St. Louis, MO \$25,000
Tucker Freight Lines, 1415 S. Olive St., South Bend, IN; motor carrier; Protective Ins. Co. D 10/31/83	July 28, 1972	Aug. 9, 1972	Detroit, MI \$50,000
M. Valihora Motor Transportation Inc., 8079 Sirron St., Detroit, MI; motor carrier; The Aetna Casualty and Surety Co.	Mar. 1, 1983	Mar. 1, 1983	Detroit, MI \$100,000

¹ Surety is American Ins. Co.² Surety is American Ins. Co.³ Surety is U.S. Fidelity & Guaranty Co.⁴ Surety is Sentry Ins. Co.⁵ Surety is American Ins. Co.⁶ Principal is M. R. & R. Trucking Co., Inc. Surety is Hartford Accident & Indemnity Co.⁷ Surety is Safeco Ins. Co. of America.⁸ Surety is Reliance Ins. Co.⁹ Surety is Washington International Ins. Co.¹⁰ Principal is Tri-State Motor Transit Co., Inc. Surety is State Surety Co.

BON-3-03
216427

EDWARD B. GABLE, JR.,
Director,
Carriers, Drawback and Bonds Division.

19 CFR Parts 10 and 147

(T.D. 83-240)

Drawback of Internal Revenue Tax and Transfer of Merchandise
Entered for a Trade Fair From a Foreign-Trade Zone

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations relating to drawback of internal revenue tax and transfer of merchandise entered for a trade fair from a foreign-trade zone, to substitute current references to Tariff Schedules of the United States item numbers. The foregoing changes are necessary to conform the regulations to statutory provisions. The document also amends the Customs Regulations to clarify that the transfer of articles entered for a trade fair from a foreign-trade zone status of "zone restricted", and afterwards entered for consumption from a trade fair, can only be accomplished after the Foreign-Trade Zones Board of the Department of Commerce has approved such a transfer as being in the public interest. This nonsubstantive change is necessary to avoid possible misinterpretation of the regulations and clearly state statutory requirements.

DATE: This rule is effective on November 25, 1983.

FOR FURTHER INFORMATION CONTACT:

Legal aspects of Part 147, Customs Regulations: Donald Beach, Carriers, Drawback and Bonds Division, (202-566-5865).

Legal aspects of Part 10, Customs Regulations: Russell X. Arnold, Classification and Value Division, (202-566-5727).

Operational aspects: Herbert Geller, Duty Assessment Division, (202-566-5307).

U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

BACKGROUND

This document implements Pub. L. 91-692 by amending the following two sections of the Customs Regulations: Section 10.3, Customs Regulations (19 CFR 10.3), and footnote 2 to that section relating to drawback of internal revenue taxes; and section 147.45, Customs Regulations (19 CFR 147.45), relating to the transfer of merchandise entered for a trade fair from a foreign-trade zone, to delete the reference to item 804.00, Tariff Schedules of the United States, (TSUS) (19 U.S.C. 1202) and substitute TSUS items 804.10 and/or 804.20, as appropriate.

Before Pub. L. 91-692, articles produced in the United States with the use of foreign articles imported under bond were excluded from entry under the provisions of TSUS item 804.00 as "American goods returned." Such articles would have to be entered and duty paid under another applicable provision of the TSUS. However, articles produced in the United States with the use of foreign articles and exported with the benefit of drawback (the refund of a duty or tax lawfully collected because of a particular use of the merchandise on which the duty or tax as collected (section 313(a))), Tariff Act of 1930, as amended (19 U.S.C. 1313(a)) could be imported under TSUS item 804.00 as "American goods returned" upon repayment of the drawback.

In the manufacture of aircraft in the United States, it is fairly common practice to use some foreign articles or materials. Export sales of aircraft produced in the United States are significant, and normally, the duty paid on the foreign articles used in the manufacture of such aircraft is subject to the drawback procedure set forth in Part 22, Customs Regulations (19 CFR Part 22), under which 99 percent of the duty paid on the foreign articles or materials is refunded upon exportation of the completed aircraft. In some instances, foreign articles for use in aircraft are temporarily entered to be repaired or altered under TSUS item 864.05, free of duty under bond (see sections 10.38, and 10.39, Customs Regulations (19 CFR 10.38, 10.39)). Such temporary duty-free entry arrangement is preferred by some manufacturers since no large amount of capital is committed to duty payment for the period between the original entry of the foreign component and the drawback of the duty upon exportation of the aircraft.

Over the years both provisions, i.e., drawback and temporary importation under bond, have been used with respect to eliminating the cost of U.S. duty on foreign articles used in the domestic manufacture of aircraft which are subsequently sold abroad.

Competition in the sales of new aircraft in world markets is rising. Very often the "trade in" allowance for old aircraft is an important factor in obtaining contracts for sales of new aircraft abroad. Under these circumstances, the dutiable status of the old

aircraft being "traded in" and returned to the United States becomes important.

In view of the importance of the "trade in" of old aircraft to sales of new aircraft abroad, Congress believed it important to provide similar Customs treatment to aircraft produced in the United States which are sold abroad and returned, whether the drawback or temporary importation bond procedure was used with respect to foreign components.

Pub. L. 91-692 provided such Customs treatment for aircraft by amending the TSUS to delete item 804.00, which provided for articles previously exported from the United States which are excepted from free entry under any of several other provisions of Schedule 8, Part 1, TSUS, and are not otherwise free of duty, and inserting in its place (a) TSUS item 804.10, relating to aircraft exported from the United States with benefit of drawback or TSUS item 864.05, and (b) TSUS item 804.20, relating to other articles. In light of the foregoing, Customs published a notice in the Federal Register on June 17, 1983 (48 FR 27776), which proposed to amend section 10.3 and footnote 2 to that section and section 147.45 to delete the reference to TSUS item 804.00 and substitute a reference to TSUS items 804.10 and/or 804.20, as appropriate.

In addition to the above, the notice proposed to amend section 147.45 to clarify that the transfer of articles entered for a trade fair from a foreign-trade zone status of "zone restricted" and afterwards entered for consumption from a trade fair can only be accomplished after the Foreign-Trade Zones Board ("Board") of the Department of Commerce has approved such a transfer as being in the public interest.

Section 147.45 does not, in its present form, make it clear that the transfer of articles entered for a trade fair from a foreign-trade zone status of "zone restricted" and afterwards entered for consumption from a trade fair can only be accomplished after the Board has approved such a transfer as being in the public interest.

No comments were received in response to the notice. Further review of the matter within Customs has not revealed any reason why the amendments should not be adopted as proposed. Accordingly, the amendments set forth below are adopted without change from the June 17, 1983, Federal Register notice.

EXECUTIVE ORDER 12291

These amendments will not result in a regulation which is a "major rule" as defined by section 1(b) of Executive Order 12291.

REGULATORY FLEXIBILITY ACT

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to these amendments because the rule will not have a significant economic impact on a substantial number of

small entities. They are technical conforming amendments which clarify existing regulatory requirements without making any substantive change.

Accordingly, it is certified under the provisions of section 3, Regulatory Flexibility Act (5 U.S.C. 605(b)) that the rule will not have a significant economic impact on a substantial number of small entities.

DRAFTING INFORMATION

The principal author of this document was John E. Elkins, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

LIST OF SUBJECTS

19 CFR Part 10

Customs duties and inspection, Imports.

19 CFR Part 147

Customs duties and inspection, Fairs and expositions, Imports.

AMENDMENTS TO THE REGULATIONS

Parts 10 and 147, Customs Regulations (19 CFR Parts 10, 147), are amended as set forth below.

ALFRED R. DEANGELUS,
Acting Commissioner of Customs.

Approved November 3, 1983.

JOHN M. WALKER, JR.,

Assistant Secretary of the Treasury.

[Published in the Federal Register, November 25, 1983 (48 FR 53097)]

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

§ 10.3 is amended by removing (a) the reference to footnote 2 in paragraph (a) and footnote 2, (b) the words "item 804.00" wherever they appear in paragraph (c)(3) and inserting in their place the words "items 804.10 or 804.20" and (c) the words "item 804.00" in paragraph (f) and inserting in their place the words "item 804.20."

(R.S. 251, as amended, 77A Stat. 14, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1202 (Gen. Hdnt. 11) 1624))

PART 147—TRADE FAIRS

§ 147.45 is amended by revising it to read as follows:

§ 147.45 Merchandise from a foreign-trade zone.

Articles entered for a trade fair from a foreign-trade zone in the status of "zone-restricted merchandise" can afterwards be entered for consumption from a fair if the Foreign-Trade Zones Board has

approved the entry for consumption as being in the public interest. Articles entered in the above manner are subject to the provisions of item 804.10, if aircraft, or item 804.20, if not aircraft, unless excluded by headnote 1(c), Subpart A, Part 1, Schedule 8, Tariff Schedules of the United States.

(R.S. 251, as amended, sections 1-21, 48 Stat. 998, 999, as amended, 1000, 1002, as amended, 1003, 77A Stat. 14, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 81a-81u, 1202 (Gen. Hdnt. 11), 1624))

(T.D. 83-241)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 USC 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Argentina peso:	
October 3-7, 1983	\$0.085837
Chile peso:	
October 3-6, 1983 .....	.012107
October 7, 1983 .....	.011912
Colombia peso:	
October 3-6, 1983 .....	.011976
October 7, 1983 .....	.011933
Greece drachma:	
October 3, 1983 .....	.010805
October 4, 1983 .....	.010782
October 5, 1983 .....	.010823
October 6, 1983 .....	.010852
October 7, 1983 .....	.010846
Indonesia rupiah:	
October 3-6, 1983 .....	.001016
October 7, 1983 .....	.001017
Israel shekel:	
October 3-6, 1983 .....	.015485
October 7, 1983 .....	.014868
Peru sol:	
October 3-6, 1983 .....	.000489
October 7, 1983 .....	.000486

South Korea won:	
October 3-7, 1983 .....	.001264
Taiwan dollar:	
October 3-7, 1983 .....	.025368

(LIQ-03-01 S:C:I)

Dated: October 7, 1983.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 83-242)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 USC 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

October 10, 1983, Holiday use Rates for October 7, 1983.

Argentina peso:

October 11-14, 1983	\$0.085837
---------------------------	------------

Chile peso:

October 11-13, 1983 .....	.011912
October 14, 1983 .....	.011933

Colombia peso:

October 11-13, 1983 .....	.011933
October 14, 1983 .....	.011874

Greece drachma:

October 11, 1983 .....	.010864
October 12, 1983 .....	.010747
October 13, 1983 .....	.010805
October 14, 1983 .....	.010735

Indonesia rupiah:

October 11-14, 1983001017
---------------------------	---------

Israel shekel:

October 11-13, 1983 .....	.012326
October 14, 1983 .....	.012241

Peru sol:

October 11-13, 1983 .....	.000486
October 14, 1983 .....	.000482

South Korea won:	
October 11-14, 1983 .....	.001264
Taiwan dollar:	
October 11-14, 1983 .....	.025368

(LIQ-03-01 S:C:D)

Dated: October 14, 1983.

ANGELA DeGAETANO,
Chief,
Customs Information Exchange.

(T.D. 83-243)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 USC 372 (c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Argentina peso:	
October 17-21, 1983	\$0.085837
Chile peso:	
October 17-21, 1983 .....	.011933
Colombia peso:	
October 17-20 1983 .....	.011874
October 21, 1983 .....	.011806
Greece drachma:	
October 17, 1983 .....	.010753
October 18, 1983 .....	.010799
October 19, 1983 .....	.010785
October 20-21, 1983 .....	.010776
Indonesia peso:	
October 17-20, 1983 .....	.001017
October 21, 1983 .....	.001015
Israel shekel:	
October 17-18, 1983 .....	.012206
October 19-20, 1983 .....	.012121
October 21, 1983 .....	.012195

Peru sol:	
October 17-20, 1983 .....	.000482
October 21, 1983 .....	.000477
South Korea won:	
October 17-21, 1983 .....	.001264
Taiwan dollar:	
October 17-21, 1983 .....	.025368

(LIQ-03-01 S:C:I)

Dated: October 21, 1983.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 83-244)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 USC 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Argentina peso:	
October 24-28, 1983	\$0.085837
Chile peso:	
October 24-27, 1983 .....	.011933
October 28, 1983 .....	.011765
Colombia peso:	
October 24-27, 1983 .....	.011806
October 28, 1983 .....	.011756
Greece drachma:	
October 24, 1983 .....	.010684
October 25, 1983 .....	.010701
October 26, 1983 .....	.010677
October 27, 1983 .....	.010664
October 28, 1983 .....	.010667
Indonesia rupiah:	
October 24-27, 1983 .....	.001015
October 28, 1983 .....	.001014

Israel shekel:	
October 24-27, 1983 .....	.012195
October 28, 1983 .....	.012002
Peru sol:	
October 24-27, 1983 .....	.000477
October 28, 1983 .....	.000474
South Korea won:	
October 24, 1983 .....	.001264
October 25-28, 1983 .....	.001262
Taiwan dollar:	
October 24-28, 1983 .....	.025368

(LIQ-03-01 S:C:D)

Dated: October 28, 1983.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 83-245)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 USC 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Argentina peso:	
October 31, 1983	\$0.085837
Chile peso:	
October 31, 1983 .....	.011765
Colombia peso:	
October 31, 1983 .....	.011756
Greece drachma:	
October 31, 1983 .....	.010627
Indonesia rupiah:	
October 31, 1983 .....	.001014
Israel shekel:	
October 31, 1983 .....	.012002
Peru sol:	
October 31, 1983 .....	.000474

South Korea won:
October 31, 1983001261
Taiwan dollar:
October 31, 1983025368

(LIQ-03-01 S:C:I)

Dated: October 31, 1983.

ANGELA DeGAETANO,
Chief,
Customs Information Exchange.

(T.D. 83-246)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 USC 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 83-219 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Philippine peso:
October 5-7, 1983 \$0.071174

(LIQ-03-01 S:C:I)

Dated: October 7, 1983.

ANGELA DeGAETANO,
Chief,
Customs Information Exchange.

(T.D. 83-247)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 USC 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 83-219 for the

following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

October 10, 1983, Holiday use Rates for October 7, 1983.

Brazil cruzeiro:	
October 13-14, 1983	\$0.001282
Hong Kong dollar:	
October 11, 1983 .....	.120919
October 12, 1983 .....	.121065
October 13, 1983 .....	.121507
October 14, 1983 .....	.122399
Philippine peso:	
October 11-14, 1983 .....	.071174

(LIQ-03-01 S.C.I)

Dated: October 14, 1983.

ANGELA DeGAETANO,
Chief,
Customs Information Exchange.

(T.D. 83-248)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 USC 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 83-219 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Brazil cruzeiro:	
October 17-19, 1983	\$0.001282
October 20-21, 1983 .....	.001245
Hong Kong dollar:	
October 17, 1983 .....	.125000
October 18, 1983 .....	.127065
October 19, 1983 .....	.127551
October 20, 1983 .....	.128535
October 21, 1983 .....	.128370

Philippine peso:

October 17-21, 1983071174

(LIQ-03-01 S.C.I)

Dated: October 21, 1983.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 83-249)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 USC 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 83-219 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Brazil cruzeiro:

October 24-26, 1983 \$0.001245

October 27-28, 1983001217

Hong Kong dollar:

October 24-27, 1983128205

October 28, 1983128164

Philippine peso:

October 24-28, 1983071174

(LIQ-03-01 S.C.I)

Dated: October 28, 1983.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 83-250)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 USC 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 83-219 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Brazil cruzeiro:	
October 31, 1983	\$0.001188
Hong Kong dollar:	
October 31, 1983 .....	.128164
Philippine peso:	
October 31, 1983 .....	.071174
Rep. of South Africa rand:	
October 31, 1983 .....	.85150

(LIQ-03-01 S:C:I)

Dated: October 31, 1983.

ANGELA DeGAETANO,
Chief,
Customs Information Exchange.

United States Court of International Trade

One Federal Plaza
New York, N.Y. 10007

Chief Judge

Edward D. Re

Judges

Paul P. Rao
Morgan Ford
Frederick Landis
James L. Watson

Bernard Newman
Nils A. Boe
Gregory W. Carman

Senior Judges

Herbert N. Maletz
Samuel M. Rosenstein

Clerk

Joseph E. Lombardi

Decisions of the United States Court of International Trade

(Slip Op. 83-116)

REPUBLIC STEEL CORPORATION, UNITED STATES STEEL CORPORATION, ET AL., PLAINTIFFS, v. UNITED STATES OF AMERICA AND UNITED STATES INTERNATIONAL TRADE COMMISSION, DEFENDANTS and COMPANHIA SIDERURGICA PAULISTA (COSIPA), ET AL., INTERVENORS

Consolidated Court No. 82-03-00372

Before WATSON, Judge.

Memorandum Opinion and Order On Motion for Severance

[Motion granted.]

(Decided November 10, 1983)

Cravath, Swaine & Moore (Alan J. Hruska of counsel) for plaintiffs Republic Steel Corp., Inland Steel Company, Jones & Laughlin Steel Inc., National Steel Corp., and Cyclops Corporation.

Law Department of United States Steel Corporation (D.B. King, J.J. Mangan, C.D. Mallick, L. Ranney and P.J. Koenig of counsel) for plaintiff United States Steel Corporation.

Office of the General Counsel, International Trade Commission (Michael H. Stein, General Counsel; Michael P. Mabile, Assistant General Counsel; Catherine R. Field, Attorney) for the federal defendants.

Wald, Harkrader & Ross (Christopher Dunn and Vaughan Finn of counsel) for defendant-intervenors COSIPA and USIMINAS.

WATSON, Judge: Consolidation, which once held promise for the efficient and speedy resolution of this action, now presents a problem. U.S. Steel has taken an interlocutory appeal of this Court's decision denying its corporate counsel access to business confidential information in the administrative record here under judicial review. The remaining five plaintiffs had moved to sever their actions at a time when the taking of an appeal was uncertain and the Court left the motion pending to await future events. Since the appeal is now a reality, the Court considers it necessary, for the reasons set out more fully in *United States Steel Corporation, Republic Steel Corporation, et. al. v. United States, et. al.* (Slip Opinion 83-115, November 9, 1983) to sever U.S. Steel's action from the others so that the other plaintiffs may proceed in accordance with the statutory priority and expedited treatment required for their action. It would be unfair for them to have to await the outcome of an issue which is of importance only to plaintiff U.S. Steel.

The Court has reviewed the filings of the parties on the question of severance and found no good reason to maintain this action in its consolidated form.

Accordingly, it is

ORDERED that the claims of U.S. Steel are severed from this action and restored to their original form as Court No. 82-07-01053.

Dated: November 10, 1983, New York, New York.

JAMES L. WATSON,
Judge.

(Slip Op. 83-117)

MONSANTO INDUSTRIAL CHEMICALS CO., PLAINTIFF, *v.* UNITED
STATES, DEFENDANT

Court No. 83-10-01470

Memorandum Opinion and Judgment

[Plaintiff motion for Summary Judgment denied; Defendant and Defendant-Intervenor motion for Summary Judgment granted.]

(Decided November 10, 1983)

Stewart & Stewart (Eugene L. Stewart, Terence P. Stewart and Kathleen T. Weaver on the motion) for plaintiff.

J. Paul McGrath, Assistant Attorney General, *David M. Cohen*, Department of Justice, Commercial Litigation Branch, Civil Division (*J. Kevin Horgan* on the motion) for the defendant.

Barnes, Richardson & Colburn (*E. Thomas Honey* and *Richard Haroian* on the motion) for defendant-intervenor Shikoku Chemicals Corporation.

Graham & James (*Stuart E. Benson* and *Gary W. Christian* on the motion) for defendant-intervenor Nissan Chemical Industries.

LANDIS, *Judge*: Plaintiff, a domestic producer of cyanuric acid and its chlorinated derivatives, moves for summary judgment pursuant to Rules 56(a) and 7(f) of this Court. Standing is premised upon Section 777(c)(2) of the Tariff Act of 1930, as amended (19 USC § 1677f(c)(2) (Supp. IV 1980)), and jurisdiction upon 28 USC § 1581(f). The Department of Commerce (ITA division) investigation was published in 48 Fed. Reg. 29037, Cyanuric Acid and Its Chlorinated Derivatives from Japan.

This Court granted an order, brought by plaintiff pursuant to an order to show cause, for an abbreviated time schedule enabling plaintiff to file, and defendant to answer, a summary judgment motion pursuant to the aforementioned statutes. Additionally, the court ordered that two (2) parties (Nissan Chemical Industries and Shikoku) be permitted to intervene. The court held a hearing on the issue in question on November 1, 1983, hearing the parties and intervenors on oral argument.

The singular issue presented is plaintiff's entitlement to the customers' name lists submitted by the intervenors. Plaintiff maintains it requires access to the confidential customers' name lists in order to investigate differential price scales in the foreign home market industry (Japan). Defendant and defendant-intervenors argue that divulgence of these lists is improper on several grounds. Initially, defendant maintains that future antidumping and countervailing duties investigations may be impeded because foreign producers will be reluctant to disclose information under the cloak of confidential treatment where the confidentiality promise is readily side-stepped. Defendant and defendant-intervenors further maintain that plaintiff has failed to sustain its burden under the balance test under Section 777(c)(2) (19 USC § 1677f(c)(2) (Supp. IV 1980)), as enunciated in S. Rep. No. 249, 96th Cong., 1st Sess. 99-100 (1979). Finally, defendant and defendant-intervenors argue that the customers' name list is not relevant and is unnecessary for plaintiff to conduct its proceeding as all other relevant confidential information has been disclosed previously.

In examining all documents of record and upon hearing of oral arguments by all parties and intervenors of record, this Court finds that defendant and defendant-intervenors motion for summary judgment should be granted, and that plaintiff's motion for summary judgment should, in all respects, be denied.

The court appreciates plaintiff's diligence in seeking the confidential information in question. However, disclosure of customer name lists, despite the protection of court order to limited access, has been historically quite limited. *Republic Steel v. United States*, — CIT —, Slip Op. 83-70 (July 14, 1983), mod., Ct. order (August 29, 1983); *Shawmut, Inc. v. American Viscose Corp.*, 11 F.R.D. 562 (S.D.N.Y. 1951); 4 Moore, *Moore's Federal Practice* § 46.60[4]26-242 to 26-245 (2d ed. 1983). The balancing test, i.e., the respective needs of the foreign producers to protect disclosure of information submitted in confidence as opposed to the harm disclosure may cause if the information disclosed and inadvertently disseminated by the obtaining party must be carefully viewed. Indeed, in the recent case of *Roquette Freres et al. v. United States*, 4 CIT —, 554 F. Supp. 1246, the court developed this balancing test in a *judicial review* pursuant to an adjacent statute proceeding under section 516A(b)(2)(B) of the Tariff Act of 1930. The court set forth this cautious and definitive approach for a judicial proceeding which inevitably determines the *final* outcome of the particular trade action.

The instant action concerns only the investigative stage of the proceedings conducted by the ITA. Release of such requested sensitive confidential documents at the primary stage of an investigation leading to judicial review without compelling reasons surely dampens the propensity of foreign producers to divulge confidential information in future trade cases. The overall domestic public in-

terest is thereby placed at a distinct disadvantage in rectifying future wrongs caused by foreign trade predators.

Here, plaintiff has not demonstrated his need as compared with that of the public interest in obtaining these documents at the investigative stage. Plaintiff is not empowered to act as an independent investigator to the proceeding.

Plaintiff has received all the confidential documents submitted to the ITA during this investigatory period except for the actual customer names. Plaintiff has not demonstrated that the availability of the customer names outweighs the confidential protection afforded by the ITA in the good of the public interest nor, that the relevancy outweighs said public interest.

Therefore, defendant and defendant-intervenors' cross-motion for summary judgment is granted;

Plaintiff's motion for summary judgment is denied.

JUDGMENT

MONSANTO INDUSTRIAL CHEMICALS CO., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 83-10-01470

LANDIS, *Judge.*

This case having been duly submitted for decision and the Court, after due deliberation, having rendered a decision herein; now, in conformity with said decision,

It is hereby ORDERED, ADJUDGED, and DECREED:

That defendant and defendant-intervenors' motions are hereby granted;

And it is further ORDERED, ADJUDGED, and DECREED, that plaintiff's motion for Summary Judgment is, in all respects, denied.

Let judgment enter accordingly.

Dated at New York, N.Y., November 10, 1983.

(Slip Op. 83-118)

UNITED STATES, PLAINTIFF *v.* FEDERAL INSURANCE COMPANY and COMETALS, INC., DEFENDANTS

Court No. 82-05-00594

Before WATSON, *Judge.*

Memorandum Opinion and Order on Motion to Dismiss

[Motion granted in part.]

(Decided November 15, 1983)

J. Paul McGrath, Assistant Attorney General, *Joseph I. Liebman*, Attorney in Charge, International Trade Field Office (*Barbara M. Epstein*, attorney) for plaintiff.

Serko & Simon (David Serko, Margaret H. Sachter, George S. Locker, of counsel) for defendants.

WATSON, Judge: This opinion is limited to deciding the plaintiff's motion to dismiss defendants' counterclaims. The action itself was brought by the United States under 28 U.S.C. § 1582 (2) and (3) for payment of duties and to recover on a bond posted to insure the payment of duties. The action was brought against Cometals, Inc., the importer of the merchandise and Federal Insurance Company, the surety under a general term bond posted by the importer. The action was brought after the importer's customhouse broker, James Loudon & Co. Inc., failed to pay the duties and declared bankruptcy.

The defenses and counterclaims are generally based on claims that the government failed to adequately supervise the broker and failed to notify defendants of the broker's precarious financial condition. This assertedly amounted to tortious negligence or breach of an implied contract on the part of the government which caused financial loss to the importer and increased the risk to the surety. The counterclaims are said to arise under the Federal Tort Claims Act (28 U.S.C. §§ 2671 *et seq.*) the Tucker Act (28 U.S.C. § 1491), the Administrative Procedure Act (5 U.S.C. §§ 701 *et seq.*), and the theory of equitable recoupment.

Plaintiff has moved to dismiss the counterclaims for failure to state a claim. In this opinion, the Court dismisses all but one, as being outside the counterclaim jurisdiction of the Court. The counterclaim for equitable recoupment appears to function much as a set-off, and to that extent its disposition is reserved for the decision on plaintiff's main claim.

The Administrative Procedure Act does not create an action for damages so it has no place as a counterclaim in this action. This Court has no jurisdiction over claims arising under the Federal Tort Claims Act (28 U.S.C. § 1346(b)). *Bar Bea Truck Leasing Co. v. United States*, 4 CIT 70, 546 F. Supp 558 (1982) *rev'd on other grounds*, 713 F.2d 1563 (C.A.F.C. 1983). Consequently, a counterclaim under that Act is *a fortiori* outside the jurisdiction of the Court.

The remaining counterclaim is brought under the Tucker Act (28 U.S.C. § 1491). To dispose of that claim, grounded in breach of an express or implied contract, it is sufficient to note that it cannot come within the counterclaim jurisdiction of the Court because it does not meet the statutory requirements.

The terms of 28 U.S.C. § 1583¹ (and Rule 13 of the Court Rules, which reflect the statute) limit counterclaims to claims which in-

¹ Sec. 1583. *Counterclaims, cross-claims, and third-party actions:* In any civil action in the Court of International Trade, the Court shall have exclusive jurisdiction to render judgment upon any counterclaim, cross-claim, or third-party action of any party, if (1) such claim or action involves the imported merchandise that is the subject matter of such civil action, or (2) such claim or action is to recover upon a bond or customs duties relating to such merchandise.

volve the imported merchandise or to claims to recover upon a bond or customs duties. It is clear that the "Tucker Act" claim does not belong to the latter. It is further clear that it does not involve the imported merchandise within the meaning of the statute. This reasoning is unavoidable because if "involvement" with the imported merchandise is not sufficient to support a counterclaim by the government to collect customs duties (thus requiring a special mention to permit those counterclaims) the somewhat more remote dispute about the government's obligations to supervise brokers and inform importers and sureties certainly does not "involve the imported merchandise" within the meaning of the counterclaim provision.

For the reasons expressed above, the defendant's counterclaims, with the exception of the claim for equitable recoupment, are hereby **DISMISSED**.

Dated: November 15, 1983, New York, New York.

JAMES L. WATSON,
Judge.

Decisions of the United States Court of International Trade

Abstracts *Abstracted Protest Decisions*

DEPARTMENT OF THE TREASURY, November 17, 1983.

The following abstracts of decisions of the United States Court of International Trade at New York are published for the information and guidance of officers of the Customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary here given will be of assistance to Customs officials in easily locating cases and tracing important facts.

WILLIAM VON RAAB,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED Item No. and Rate	HELD Item No. and Rate	BASIS	PORT OF ENTRY AND MERCHANDISE
P83/359	Reo, J. November 10, 1983	Cleveland Street Togs	80-2-00301	Under item 807.00 at rate of duty applicable to items 382.83, 382.81 or 380.04 with allowance given to cost or value of some of the fabric components, the product of the U.S. and utilized in assembling the imported merchandise; no allowance made for fabric components, the product of U.S. subjected to buttonhole and/or pocket slit operations during assembly of imported garments	Components subjected to buttonhole and/or pocket slit operations during the assembly process are properly classifiable under item 807.00 and entitled to duty allowance	U.S. v. Meat Industries, Inc. No. 81-15 aff'd 12/30/81	Miami American goods returned; articles of wearing apparel assembled abroad in part of U.S. fabricated components

P83/360	Rao, J. November 10, 1983	Interamerican Assemblies Inc.	80-2-00300	Under Item 807.00 at rate of duty applicable to Item 382.35, 382.61 or 380.84 with allowance given to cost of the fabric components, the product of the U.S. and utilized in assembling the imported merchandise; no allowance made for fabric components, the product of U.S.	Components subjected to buttonhole and/ or pocket slit operations during the assembly process are properly classifiable under Item 807.00 and entitled to duty allowance subjected to buttonhole and/ or pocket slit operations during assembly of imported garments	U.S. v. Mast Industries, Inc. No. 81-18 aff'd 12/30/81	Miami American goods returned; ar- ticles of wearing apparel as- sembled abroad in part of U.S. fabricated components
P83/361	Rao, J. November 10, 1983	Ozen Sound Devices, Inc.	80-10-01815, etc.	Item 737.90 16.2% Item 737.95 17.5%	Item 685.32 5.3%	Agreed statement of facts	New York Talking mechanisms
P83/362	Boe, J. November 10, 1983	Sanyo Electric Inc.	81-5-00481	Items 716.16, 716.18, 720.16, etc. Various rates ("watch or clock movements") Item 740.35 32.4% or 29.8% ("watchbands") Item 774.55 8.1% ("watchbands")	Item 688.35 5.9% or 5.1%	Texas Instruments, Inc. v. U.S. 1 CIT 236 (1981) aff'd No. 81-33, 3/25/82	New York Solid state watches, including watch modules, watchcases and watchbands

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Item No. and Rate	Item No. and Rate		
P83/363	Watson, J. November 16, 1983	Harper-Oak Limited	78-8-01407, etc.	Item 807.00 Duty assessed to extent applicable under item 711.84 at rate of 7%	Item 684.30 4% except as to those parts classified under item 807.00 which are properly entitled to duty-free allowance	Harper Wyman Co. v. <i>U.S.</i> / <i>CIT 108 (1981)</i>	Chattanooga (New Orleans) Electric thermostats
P83/364	Watson, J. November 16, 1983	Lawrence M. Parry, Jr. CHB a/c Magic Chef, Inc.	78-12-02288, etc.	Item 807.00 Duty assessed to extent applicable under item 711.84 at rate of 7%	Item 684.30 4% except as to those parts classified under item 807.00 which are properly entitled to duty-free allowance	Harper Wyman Co. v. <i>U.S.</i> / <i>CIT 108 (1981)</i>	Chattanooga (New Orleans) Electric thermostats

Decisions of the United States Court of International Trade

Abstracts *Abstracted Reappraisement Decisions*

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
E83/710	Reo, J. November 10, 1983	Grolier Incorporated	81-2-00148	Constructed value	All payments of royalties, including royalty ad- vances and royalty guar- antees excluded from ap- praisal value of merchan- dise	Agreed statement of facts	New York Film negatives on entry Nos. K356559, K189294, K431199 and K355525

Decision of U.S. Court of Appeals for the Federal Circuit

APPEAL No. 83-871—*Carlingswitch, Inc. v. The United States*—
PENALTY INVESTIGATION—UNDERSTATEMENT OF THE VALUE OF
CERTAIN SHIPMENTS OF SWITCHES, INDICATOR LIGHTS AND RELAT-
ED PRODUCTS, Appeal from Slip Op. 83-13, filed March 14, 1983,
affirmed November 8, 1983.

Index

U.S. Customs Service

Treasury decisions:	T.D. No.
Boarding and search of vessels, sec. 162.3 CR, amended	83-238
Bonds, carrier's	83-239
FTZ, transfer of merchandise for trade fair from Parts 10-147, CR, amended.....	83-240
Foreign currencies; Daily rates:	
10/3-7, 1983.....	83-241
10/10-14, 1983.....	83-242
10/17-21, 1983.....	83-243
10/24-28, 1983.....	83-244
10/31/1983.....	83-245
Foreign currencies, Variances:	
10/3-7, 1983.....	83-246
10/10-14, 1983.....	83-247
10/17-24, 1983.....	83-248
10/24-28, 1983.....	83-249
10/31/1983.....	83-250

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, \$300

POSTAGE AND FEES PAID
DEPARTMENT OF THE TREASURY (CUSTOMS)
(TREAS. 552)



* CB SERIA300SDISSDUE049R 1
* SERIALS PROCESSING DEPT
* UNIV MICROFILMS INTL
* 300 N ZEEB RD
* ANN ARBOR MI 48106

